

HOUSE HEALTH AND GOVERNMENT AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1275

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO THE UNIFORM COMMERCIAL CODE; PROVIDING FOR
JURISDICTION AND FORUM TO GOVERN LEASE OR RENTAL CONTRACTS;
LIMITING INDEMNIFICATION BY A PARTY OF A LEASE TO ANOTHER PARTY
OF THAT LEASE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 55-2A-106 NMSA 1978 (being Laws 1992,
Chapter 114, Section 13) is amended to read:

"55-2A-106. LIMITATION ON POWER OF PARTIES TO CONSUMER
LEASE TO CHOOSE APPLICABLE LAW AND [JUDICIAL] FORUM.--

(1) If the law chosen by the parties to a consumer
lease is that of a jurisdiction other than a jurisdiction in
which the lessee resides at the time the lease agreement
becomes enforceable or within thirty days thereafter or in
which the goods are to be used, the choice is not enforceable.

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underscored material = new
[bracketed material] = delete

1 (2) If the judicial forum chosen by the parties to
2 a consumer lease is a forum that would not otherwise have
3 jurisdiction over the lessee, the choice is not enforceable.

4 (3) If the forum for an arbitration or mediation
5 hearing chosen by the parties to a consumer lease is in a state
6 or in a similar political subdivision in a foreign country
7 other than the state or the similar subdivision in the foreign
8 country in which the lessee resides at the time the lease
9 agreement becomes enforceable or within thirty days thereafter
10 or in which the goods are to be used, the choice is not
11 enforceable."

12 Section 2. A new section of Chapter 56, Article 7 NMSA
13 1978 is enacted to read:

14 "[NEW MATERIAL] COMMERCIAL INSTRUMENTS AND TRANSACTION.--

15 A. A provision of a lease or rental contract for
16 equipment that requires a party to the agreement to indemnify,
17 hold harmless, insure or defend the other party to the
18 agreement, including the other party's officers, employees or
19 agents against liability, claims, damages, losses or expenses,
20 including attorney fees, arising out of bodily injury to a
21 person or damage to property caused by or resulting from, in
22 whole or in part, the negligence, act or omission of the
23 indemnitee, its officers, employees or agents, is void,
24 unenforceable and against the public policy of this state.

25 B. A lease or rental contract for equipment may

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1 contain a provision that requires one party to the contract to
2 indemnify, hold harmless or insure the other party to the
3 contract, including its officers, employees or agents, against
4 liability, claims, damages, losses or expenses, including
5 attorney fees, only to the extent that the liability, damages,
6 losses or expenses are caused by, or arise out of, the acts or
7 omissions of the indemnitor or its officers, employees or
8 agents.

9 C. A lease or rental contract for equipment that
10 does not contain a provision covered by this section shall be
11 presumed to conform to Subsections A and B of this section.

12 D. As used in this section, "lease or rental
13 contract for equipment" means any public, private, foreign or
14 domestic contract or agreement relating to the temporary use of
15 equipment without transfer of ownership of the equipment from
16 one party to the other.

17 E. As used in this section, "indemnify" or "hold
18 harmless" includes any requirement to name the indemnified
19 party as an additional insured in the indemnitor's insurance
20 coverage for the purpose of providing indemnification for any
21 liability not otherwise allowed in this section. The
22 provisions of this subsection shall not restrict the right of
23 any remedy available to a claimant or plaintiff.

24 F. Nothing in this section shall apply to a lease
25 or rental contract for a motor vehicle, as "motor vehicle" is

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1 defined in Section 66-1-4.11 NMSA 1978 and that is designed and
2 used primarily to transport persons or property on a public
3 highway.

4 G. Nothing in this section shall apply to a
5 security agreement as defined in Section 55-9-102 NMSA 1978 or
6 to a finance lease as defined in Section 55-2A-103 NMSA 1978 or
7 to a lease by a repossessing lessor for equipment repossessed
8 upon default under such a finance lease.

9 H. Nothing in this section shall apply to a lease
10 or rental contract for equipment for use in the production of
11 motion pictures or television."